

REMARKS

The Applicant has reviewed and fully considered the November 30, 2009 Office Action. The arguments we submitted in our previous response still apply to the differences between the present invention and the prior art. We respectfully disagree with the Examiner's rejections for the following reasons.

Claims 1-5, 10, 13-15 and 25-26 are rejected under 35 USC 102(e) as being anticipated by Bone *et al.* (U.S. Patent No. 7,083,047). In order for a rejection under 35 USC 102(e) to be proper it must disclose all of the limitations found in the rejected claim. However Bone *et al* fails to meet this requirement.

Claims 1, 18, 27 and 28 all contain the limitation of an aqueous sensitive component, a mineral oil gelling agent and a mineral oil emulsifying agent. Claims 2-5, 10, 13-15 and 25-26 all depend from Claim 1. As such they contain all of the limitations of Claim 1 including those listed above. Bone *et al* fails to disclose these limitations. The Examiner appears to have taken the teaching in the prior art documents, and has made a number of generalizations and assumptions which are incorrect and extend the teaching in the prior art documents beyond what is actually taught.

Bone *et al* teaches a water soluble package containing a fabric treatment composition, such as a rinse aid (Col.1, lines 6-10; Col. 5, lines 46-53). There is no teaching in Bone *et al* to an aqueous sensitive component contained within a water soluble package. The Examiner appears to consider the rinse conditioner is equivalent to an aqueous sensitive component. However, a skilled person in the art would immediately recognise that rinse conditioners are not aqueous sensitive and therefore does not fall within the feature of an "aqueous sensitive component" as defined in the claims of the present application. It is well known that rinse conditioners contain an aqueous component and can therefore not be said to be an aqueous sensitive component. Bone *et al* acknowledges this fact in Col. 3, lines 65-Col. 4, lines 1-3. Bone *et al* does not teach to anything specific other than a rinse conditioner being placed in the aqueous sensitive sachet and, whilst Bone *et al* teaches to the composition contained within the sachet being compatible with the sachet (Col. 5, lines 47-53), this does not disclose the composition within the sachet must contain an aqueous sensitive component. The Examiner has incorrectly extended the teaching in Bone *et al* in suggesting the rinse conditioner is equivalent to an aqueous sensitive component.

We are not disputing that Bone *et al* teaches at Col. 5, lines 47-53 to the water soluble sachet being stable for up to 20 weeks. Our invention relates to the stability of the composition contained within a water soluble sachet or device and not to the stability of the sachet or device itself. Bone *et al* does not teach or disclose the stability of the composition within the water soluble sachet.

The Examiner also considers that Bone *et al* teaches a gelling agent and an emulsifying agent. The Office Action states that:

“Bone *et al* teaches esterified sucrose erucate, which reads onto a gelling agent and a secondary alkyl alcohol with an average degree of ethoxylation of 7, a non-ionic surfactant, which reads onto the emulsifying agent”.

Firstly, esterified sucrose erucate is not known as a gelling agent as suggested in the Office Action. This is an incorrect assumption. Esterified sucrose erucate is an ester. Not all esters are gelling agents and not all gelling agents will gel mineral oil. Esterified sucrose erucate will not gel mineral oil. Therefore, Bone *et al* does not disclose a mineral oil gelling agents as per amended claim 1. The Examiner has incorrectly significantly extended the teaching in Bone *et al* by identifying an ester and then suggesting that the ester must be a gelling agent and must gel mineral oil.

Furthermore, Bone *et al* does not disclose or teach the function of the secondary alkyl alcohol. A skilled person in the art would know that alcohol ethoxylates are actually used to stop gelling in fabric conditioners and therefore would not be used in the context of the present invention for a composition which requires gelling of the mineral oil carrier. Thus, the section of text highlighted by the Examiner actually teaches away from the present invention.

The Office Action then goes on to state that: “In Col. 16, line 65-Col. 17, line 53, Bone *et al* teaches non-ionic surfactants (which are emulsifying agents). . . . and polymeric stabilisers (which also read on the gelling agent). . . . Bone *et al* also teaches enzymes (see Col. 20, lines 21-31) which also read on the aqueous sensitive component.”

The Examiner once again appears to be making an incorrect assumption that all non-ionic surfactants are emulsifying agents. Non-ionic surfactants is a very broad heading covering a large number of components all having different chemical characteristics covering both non-emulsifying agents and emulsifying agents. The term “non-ionic surfactant” is not a disclosure of a specific group of substances within that heading (i.e. to a group of emulsifying agents specific to emulsifying mineral oil). In any case, the passage identified by the Examiner in relation to non-ionic surfactants

relates to their use as dispersion agents and not to emulsifying agents for emulsifying mineral oil. Bone *et al* does not mention use of non-ionic surfactants as emulsifying agents and therefore the Examiner has incorrectly extended the teaching in Bone *et al* to cover this possibility.

Furthermore, the Examiner has incorrectly assumed that all polymeric stabilisers are gelling agents. This is not the case and therefore mention of polymeric stabiliser is not disclosure of a mineral oil gelling agent as in the present invention. Bone *et al* makes no mention that the polymeric stabilisers are gelling agents.

Although Bone *et al* teaches to mineral oil, its use is for providing perfume delivery (Col. 19, lines 4-13) and there is no teaching in Bone *et al* to providing the mineral oil as a carrier agent for a water sensitive component.

The Examiner considers that the teaching in Bone *et al* to enzymes falls within the definition of a water sensitive component used in the present invention. Thus, the Examiner considers that Bone *et al* is teaching to enzymes being hydrolytically unstable. However, in the context of the Bone *et al* document, the enzymes are being taught as hydrolytically stable in the conditions described. The enzymes taught in Bone *et al* would only work to prevent damage to the aqueous film if they are hydrolytically stable in an aqueous system. This does not teach to an aqueous sensitive component for use in a non-aqueous system as in the present invention.

Thus, in summary, Bone *et al* makes broad generalisations of lots of different composition components for containment within the water soluble sachet. However, a skilled person would know that not all combinations of the components would be suitable for a rinse conditioner solving the problem set out in Bone *et al*. A skilled person would need to apply significant inventive input to identify specific components within the broad general headings used in Bone *et al* that would be compatible with a mineral oil based carrier, which gels and which contains an aqueous sensitive component. It is not a matter of routine experimentation.

Furthermore, since Bone *et al* does not teach to the problem solved by the present invention, a skilled person reading Bone *et al* would have no incentive to test specific combinations of components to result in the composition of the present invention. There is no incentive or teaching in Bone *et al* to use the mineral oil as a carrier for an aqueous sensitive component within an aqueous sensitive sachet, nor to providing a gelling agent or emulsifying agent specific to the mineral oil.

For the foregoing reasons the Applicant respectfully requests the rejection of Claims 1-5, 10, 13-15 and 25-26 under 35 USC 102(e) as being anticipated by Bone *et al* be withdrawn.

Claim 11 is rejected under 35 USC 103(a) as being unpatentable over Bone *et al*. For a 103 rejection to be proper, the references cited by the Examiner must disclose or suggest all the limitations of the Applicant's claim. *See In re Royka*, 490 F.2d 981 (CCPA 1974) (holding that a proper § 103 rejection requires that the prior art teach all of the claim limitations); *see also Ex parte Wada*, BPAI 2007-3733 at 7. (Jan. 14, 2008) (a post-*KSR* decision citing *In re Royka* and other Federal Circuit cases holding that obviousness requires a suggestion of all limitations in a claim). Because the cited prior art fails to disclose all the limitations of Claim 11 this obviousness rejection is improper.

Claim 11 depends from Claim 1. As such they contain all of the limitations of Claim 1, including the limitations of an aqueous sensitive component, a mineral oil gelling agent and a mineral oil emulsifying agent. As explained above Bone *et al* fails to disclose these limitations.

Additionally, as explained above, Bone *et al* teaches away from the present invention as found in Claim 11. This is based on Bone *et al*'s use of A alcohol ethoxylates which would actually stop gelling in fabric conditioners and therefore would not be used in the context of the present invention

For the foregoing reasons the Applicant respectfully requests the rejection of Claim 11 under 35 USC 103(a) as being unpatentable over Bone *et al* be withdrawn.

Claims 1-11, 13-15, 18-19 and 25-27 are rejected under 35 USC 103(a) as being unpatentable over Smith *et al*. (U.S. Patent Publication No. 2002/0142930). As explained above the cited references must disclose all of the limitation of the rejected Claims. Claims 2-11, 13-15, and 25-26 depend from Claim 1. Claim 19 depends from Claim 18. These dependent claims contain all of the limitations of their parent claims.

With regard to Smith *et al* (US2002/0142930), as with Bone *et al* this document makes broad generalisation of chemical components that can be used in a dishwashing product. A skilled person would still need to use significant inventive input in identifying specific groups of chemicals within the broad generalisations that would work together to produce a composition that solves the problem identified in the present invention. Nowhere in Smith *et al* does it disclose or teach all the components of amended Claim 1 or to the problem solved by the present invention.

The Examiner considers that paragraph 0067 in Smith et al relating to the use of organic polymers and paraffin teaches a gelling agent and non-aqueous carrier respectively. We respectfully disagree with the Examiner. Organic polymers is a broad term covering a huge number of chemicals, only some of which are gelling agents and only some of which will gel mineral oil. This broad general heading does not teach to the specific use of a mineral oil gelling agent nor does it teach to the problem of why you would want to use a mineral oil gelling agent. A skilled person would immediately recognise that the chemicals listed in paragraph 0067 of Smith et al would not behave as gelling agents in the presence of mineral oil.

Furthermore, paragraphs 0012-0018 in Smith specifically define the requirements of the taught composition (i.e. the solubility requirements for the composition). For example, mineral oil does not meet the requirements of paragraphs 0017 & 0018 as it has a Hansen Fractional Solubility Factor of 100% and is not listed in paragraph 0050 for solvents that could be used. A skilled person would know that mineral oil does not meet the solubility requirements and therefore would not consider using mineral oil as the carrier agent for the composition. Smith only teaches to the use of paraffin (which is a mineral oil) as a corrosion inhibitor and does not teach to use of the mineral oil as a carrier and thus the need to have a mineral oil gelling agent and a mineral oil emulsifying agent present.

It is further noted that the polymers taught in Smith, which the Examiner assumes are gelling agents, are water soluble and not oil soluble. Furthermore, their function in Smith is as dispersing agents and anti-soil agents for detergent formulations and not as gelling agents. The assumption made by the Examiner that polymers per se are all gelling agents or teach to a gelling agent is incorrect and technically unsound.

For the forgoing reasons the Applicant respectfully requests the rejection of Claims 1-11, 13-15, 18-19 and 25-27 under 35 USC 103(a) as being unpatentable over Smith *et al.* be withdrawn.

Claim 12 is rejected under 35 USC 103(a) as being unpatentable over Smith and further in view of MacQueen *et al.* (U.S. Patent No. 6,268,466). Claim 12 depends from Claim 1 as such it contains all of the limitations of Claim 1.

Page 8 of the Office Action states that:

“it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the gelling agent of Smith with the tertiary amide terminate polyamide gelling agent of MacQueen because the substitution of one gelling agent for another is likely to be obvious when it does no more than yield predictable results”

The Examiner has incorrectly extended the teaching in Smith beyond what the patentee intended and has therefore used hindsight in assessing obviousness. Nowhere in Smith does it teach a mineral oil gelling agent and so there is no incentive or teaching in Smith to replace a gelling agent with the tertiary amide terminate polyamide gelling agent of MacQueen (US6268466). Organic polymers (taught in Smith) and polyamides (taught in MacQueen) are entirely different and have different chemical characteristics. A skilled person would therefore not consider simply swapping one for the other and it would not yield predictable results.

For the forgoing reasons the Applicant respectfully requests the rejection of Claim 12 under 35 USC 103(a) as being unpatentable over Smith and further in view of MacQueen *et al* be withdrawn.

The Applicant has included herewith an Affidavit Under 37 CFR § 1.132 by Anthony J. O’Lenick, Jr. in support of its interpretation of the prior art and its arguments.

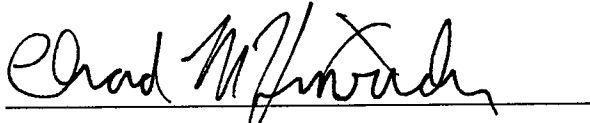
Conclusion

A serious effort has been made to respond to the Examiner’s rejections and place the application in condition for allowance. If any other amendments are necessary to place the application in condition for a Notice of Allowance, Examiner Douyon is invited to call the undersigned at the below noted telephone number so that any remaining issues can be handled in a telephone interview.

The Examiner is hereby requested to charge Deposit Account No. 50-1971 the amount of \$110.00 for the additional independent claim fee and \$26.00 for claims in excess of twenty fee.

Further, enclosed is a Petition and Fee for a Two-Month Extension of Time and a Request For Continued Examination. Please charge Deposit Account No. 50-1971 the amount of \$245.00 to cover the Extension of Time fee and \$405.00 to cover the continued examination fee. Any additional fees required by this paper or credit any overpayment can be made to Deposit Account No. 50-1971.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chad M. Hinrichs", is written over a horizontal line.

Chad M. Hinrichs, Registration No. 45,836
PTO Customer No. 28,827
GABLE GOTWALS
100 West 5th Street, 10th Floor
Tulsa, OK 74103
Tel: (918) 595-4860